IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Khem Singh & Anr. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 427/2005
against the order dated 24-1-2005 passed
by the Addl. Sessions Judge No.2, Jodhpur,
in Criminal Revision No. 19/2002.

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Date of Order: November 09, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.C. Bhoot, , for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. U.S. Gehlot, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 24-1-2005 passed by the Additional Sessions Judge No. 2, Jodhpur (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 19/2002, whereby the Revisional Court maintained the order dated 8-7-2002 passed by the Additional Collector (City), Jodhpur (for short, "the Executive Magistrate" hereinafter) directing the Executive Magistrate to construe a Trust for the public utility of the land in dispute and with this addition, the

order of the Executive Magistrate dated 8-7-2002 was maintained.

It is contended by the learned counsel for the petitioners that the Revisional Court exceeded its jurisdiction in directing the Executive Magistrate to construe a Trust under the Indian Public Trusts Act. Learned counsel for the non-petitioner No.2 submits that the land in dispute is a public property and meant for public use and the petitioners, some how or other, want to put the land for their personal use excluding the use of the land by other members of the locality.

On the proceedings under Sections 145 and 146 of the Code initiated by the Station House Office, Police Station, Mandore, Jodhpur, against the petitioners, the Executive Magistrate, vide order dated 8-7-2002, relying on the affidavits filed by various persons including the non-petitioner No.2, came to the conclusion that there is no apprehension of breach of peace. The subject-matter of dispute is meant for public use and as such it is a public property and, therefore, the Executive Magistrate did not consider it proper to continue the land under attachment and, therefore, the order dated 1-2-1999, by which the Executive Magistrate had attached the land and appointed the Receiver, was revoked and the possession of the land in dispute was directed to be given to the present petitioners with a direction that the subject-matter of dispute i.e. the land is for

public use and they would hand over the land to the general public for their use. It was also directed that since the land in dispute is a public land meant for public utility, therefore, all the persons of the locality will have an interest therein and, therefore, reputed persons of the area to form a public trust for the public utility of the land in dispute. That order came to be challenged by the non-petitioner No.2. The Revisional Court, by and large maintained the order of the Executive Magistrate, however, with an addition that the Executive Magistrate itself would form the public trust in the interest of general public at large. Thus, the order of the Executive Magistrate, at large, has been affirmed and has not been interfered with by the Revisional Court.

The petitioners are not aggrieved of the order of the Executive Magistrate as no challenge has been made to that order. From a perusal of the orders passed by the Executive Magistrate as well as the Revisional Court, it is clear that the land in dispute is meant for public utility and being a public land for public use and utility, both the courts below directed for construing a public trust so that under the control and management of the public trust, the public land can be regulated or used by the general public at large. In my view, it cannot be said that the Revisional Court committed any error or illegality in directing the Executive Magistrate to construe a public Trust.

Learned counsel for the parties submit that the petitioners have formed a trust as also the non-petitioner No. 2 has formed a trust. Learned counsel for the non-petitioner No.2 submits that the trust construed by the non-petitioner No.2 has been registered by the Assistant Commissioner, Devasthan Department, Jodhpur vide order dated 20-6-2006. Learned counsel for the petitioners submits that the petitioners have also construed the trust.

Be that as it may, the ultimate object of both the parties is to construe a public trust and to put the land for public use and utility. In the circumstances, therefore, it cannot be said that the impugned order would result in serious miscarriage of justice or abuse of the process of the Court.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed. However, the orders of the trial Court as well as the Revisional Court, as also the order of this Court, would not affect the civil rights of the parties.

(H.R. PANWAR), J.

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